

Appln. No. 10/646,156  
Amendment dated October 30, 2007  
Reply to Office Action mailed July 31, 2007

REMARKS

Reconsideration is respectfully requested.

Claims 1 through 11 remain in this application. Claims 12 through 18 have been cancelled. No claims have been withdrawn. Claims 19 through 22 have been added.

A minor change has been made to claim 1 to replace a missing article, and this change is not being made to affect the patentability of the claim.

The Examiner's rejections will be considered in the order of their occurrence in the Office Action.

Paragraph 1 of the Office Action

Claims 7 through 11 have been rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

Claims 7 through 11 have been amended in a manner submitted to overcome the Section 101 rejection.

Withdrawal of the §101 rejection of claims 7 through 11 is therefore respectfully requested.

Paragraph 5 of the Office Action

Claims 1 through 18 have been rejected under 35 U.S.C. §102(e) as being anticipated by Drossett.

Claim 1 requires, in part, "transmitting content in a streaming content format", "receiving a request to store a particular piece of the content" and "delivering said particular piece of the content in an archival format to a storage media of a user when said request to store said particular piece of the content is received".

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It is alleged in the Office Action that the requirements of the claims are disclosed in the Drosset patent at col. 2, lines 38 through 52 and col. 4, lines 44 through 52. Drosset states at col. 2, lines 38 through 52 that (emphasis added):

The present invention is directed toward a subscriber-based service for providing audio files to a client device connected to a server through a network, such as a wide area network. The server has access to user data and audio data files stored in a memory system, such as a database. A user requesting service from the server is validated to ensure that the user is a subscriber. The user may then request streaming or download of audio data files or customized playlists from the server. Metrics for play-out of each audio file, such as duration of play-out or number of play-outs, are maintained for the audio files and used to allocate payment of royalties or license fees to owners of rights in the audio files, such as copyrights or phonograph rights. The user may also maintain and modify customized playlists through the server and send playlists to other users.

However, nothing here suggests that there are two formats for providing the content—namely a “streaming content format [that] prevents storage of the content” and an “archival format [that] allows storage of the content”. Instead, the Drosset patent only vaguely refers to “streaming or download of audio data files or customized playlists”, which does not disclose or suggest that there might be more than one format—one for streaming and one for download. In fact, the statements in Drosset are equally consistent with the interpretation that both streaming and downloads are in the same format. In fact, the statements in this portion of Drosset appear to suggest that perhaps all songs are available for storage, since copyright information is maintained for all songs. In any event, nothing here suggests one format for “streaming content format [to] prevent[] storage of the content” and another format for “allow[ing] storage of the content”. It is further submitted that the disclosure of the “MP3” format in Drosset (and mentioned in the rejection of the Office Action) would not suggest to one of ordinary skill in the art the claimed “format [to] prevent[] storage of the content”.

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And Drosset further states at col. 4, lines 44 through 52 that:

The table in FIG. 4 also includes an Audio Data pointer that indicates the actual location of the digital codes of the audio file itself. The digital codes may be MPEG 3 (MP3) codes or similar data encoding methods. See the International Organisation for Standardisation (ISO) for further information relating to the Motion Picture Engineering Group (MPEG) standards for coding of moving pictures and associated audio for digital storage media at [www.cselt.it/mpeg/standards](http://www.cselt.it/mpeg/standards).

However, this portion of Drosset does nothing to suggest that there are formats for the different purposes set forth in the language of the claims. In fact, one of ordinary skill in the art is likely to understand that the MP3 format may be the only format employed.

It is noted that these portions of the Drosset patent does not disclose the requirements of new claim 20, which requires in part "wherein the second archival format is different from the first streaming content format, the second streaming content format preventing storage of the transmitted content on the storage media of the user and the second archival format allowing storage of the delivered content on the storage media of the user".

It is further alleged in the rejection of the Office Action that:

wherein said request and delivering of the particular piece of the content in said archival format occurs in real-time of transmission of the content in said streaming content format (MP3, col 2, lines 38-52, col 3, lines 20-34; col 21, lines 35-40)

Looking to the referenced portions of the Drosset patent, the portions at col. 2 and col. 4 have been addressed about, and do not disclose the request and the delivery occurring *in real time* as required by the language of claim 1. Looking to col. 3 at lines 20 through 34, it is stated there that:

The architecture of FIG. 1 illustrates a variety of client devices and network configurations suitable for use according to the present invention. The client devices may include dedicated audio file devices, such as MP3 readers, or more generalized devices with audio capability, such as personal computers, personal data assistants, or laptop computers, that may be equipped with sound cards or similar

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equipment that permit an audio signal to be generated in response to an audio data file. Radio-frequency enabled devices, such as cell phones, automobile-based communication devices, or more general computing devices with wireless communication equipment, may also be used in accordance with the present invention.

However, this portion of the Drosset patent appears to more directed to the types of devices that may be used, rather than the timing of any request or delivery. It is submitted that nothing here suggests the performance of the request and delivery in real time. Further, Drosset states at col. 21, lines 35 through 40 that (emphasis added):

Current musical access based recommendations may be based on user interactions involving a particular album or song during the current session and may be used to generate a recommendation list utilizing a real-time collaborative filtering engine such as Net Perceptions Group Lens, or Andromedia's Like Minds. Examples of user actions that may trigger this recommendation approach may include: choosing a song to play, start of next song in the play list, positive rating of a newly heard song, selection of a promotional album for listening, and purchase of an album or a song.

This portion of the Drosset patent appears to discussing the making of recommendations for listening by the user based upon selections by the user, but does not discuss timing of any request and delivery of content in an archival format. A recommendation of a song by the Drosset system is not a request by a user, and therefore it is submitted that the Drosset system would not lead one of ordinary skill in the art to the claimed invention.

Similarly, new claim 21 requires that "the delivering of the particular piece of the content in the second archival format to the storage media of the user occurs concurrently with the transmitting of the content in the first streaming content format" and new claim 22 requires that "the receiving of the request to store the particular piece of the content occurs during the transmitting of the content in the first streaming content format, and the delivering of the particular piece of the content in the second archival format to the storage media of the user occurs concurrently with the transmitting of the content in the first streaming content format".

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It is therefore submitted that the Drossett patent would not lead one of ordinary skill in the art to the applicant's claimed invention as defined in claims 1, 7 and 12, especially with the requirements set forth above, and therefore it is submitted that claims 1, 7 and 12 are allowable over the prior art. Further, claims 2 through 4 and 6, which depend from claim 1, claim 5, which depends from claim 4, claims 8 through 11, which depend from claim 7 and claims 13 through 18, which depend from claim 12 also include the requirements discussed above and therefore are also submitted to be in condition for allowance.

Withdrawal of the §102(e) rejection of claims 1 through 11 is therefore respectfully requested.

### CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

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